रजिस्ट्री सं० डी० 221 REGISTERED NO. D 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 7] नई दिल्ली बुधवार, मार्च 7, 1973/फाल्गुन 16, 1894
No. 7] NEW DELHI, WEDNESDAY, MARCH 7, 1973/PHALGUNA 16, 1894

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 7th March, 1973:—

BILL NO. 4 OF 1973

A Bill further to amend the Employees' Provident Funds and Family Pension Fund Act, 1952 and to incorporate an explanatory provision connected therewith in section 405 of the Indian Penal Code.

BE it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Employees' Provident Funds and Family Pension Fund (Amendment) Act, 1973.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 8

19 of 1952.

2. In section 8 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (hereinafter referred to as the principal Act), for the words "be recovered by the appropriate Government", the words "be recovered by the Central Provident Fund Commissioner or such other officer as may be authorised by him, by notification in the Official Gazette, in this behalf," shall be substituted.

Amendment of section 11.

3. Section 11 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and—

7 of 1913.
1 of 1956

(*a*) in sub-section (*1*) as so re-numbered, for the words and figures "section 230 of the Indian Companies Act, 1913", the words and figures "section 530 of the Companies Act, 1956" shall be substituted;

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Without prejudice to the provisions of sub-section (*1*), if any amount is due from an employer in respect of the employee's contribution (deducted from the wages of the employee) for a period of more than six months, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.".

Amendment of section 14

4. In section 14 of the principal Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (*a*) of sub-section (*3*) of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to six months, but—

(*a*) which shall not be less than three months in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages;

(*b*) which shall not be less than one month, in any other case;

and shall also be liable to fine which may extend to two thousand rupees:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment.";

(*b*) in sub-section (*2*), for the words "The Scheme", the words "Subject to the provisions of this Act, the Scheme" shall be substituted;

(*c*) sub-section (*3*) shall be omitted.

Insertion of new sections 14AA, 14AB and 14AC

5. After section 14A of the principal Act, the following sections shall be inserted, namely:—

Enhanced punishment in certain cases after previous conviction.

"14AA. Whoever, having been convicted by a court of an offence punishable under this Act, the Scheme or the Family Pension Scheme, commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to one year but which shall not be less than three months and shall also be liable to fine which may extend to four thousand rupees.

Certain offences to be cognizable.

14AB. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable.

Cognizance and trial of offences.

14AC. (*1*) No court shall take cognizance of any offence punishable under this Act, the Scheme or the Family Pension Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed under section 13.

(*2*) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or the Scheme or the Family Pension Scheme.".

Amendment of section 14B

6. In section 14B of the principal Act,—

(*a*) for the words "the appropriate Government", the words "the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf" shall be substituted;

(*b*) **the words "twenty-five per cent. of" shall be omitted;**

(c) the following proviso shall be inserted at the end, namely:—

"Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.".

Insertion of new section 14C.

7. After section 14B of the principal Act, the following section shall be inserted, namely:—

Power of court to make orders.

"14C. (*1*) Where an employer is convicted of an offence of making default in the payment of any contribution to the Fund or in the transfer of accumulations required to be transferred by him under sub-section (*2*) of section 15 or sub-section (*5*) of section 17, the court may, in addition to awarding any punishment, by order in writing require him within a period specified in the order (which the court may, if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution or transfer the accumulations, as the case may be, in respect of which the offence was committed.

(*2*) Where an order is made under sub-section (*1*), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the court, but if, on the expiry of such period of extended period, as the case may be, the order of the court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punished with imprisonment in respect thereof under section 14 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with.".

Insertion of new section 17B.

8. After section 17A of the principal Act, the following section shall be inserted, namely:—

Liability in case of transfer of establishment.

17B. **Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due under section 14B from the employer up to the time of such transfer:**

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."

Amendment of Act 45 of 1860.

9. To section 405 of the Indian Penal Code, the following *Explanation* shall be added, namely:—

"*Explanation*.—A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

STATEMENT OF OBJECTS AND REASONS

The working of the Employees' Provident Funds and Family Pension Fund Act, 1952 and the Employees' Provident Fund Scheme has revealed that the present provisions of the Act and the Scheme are not effective in preventing defaults in payment of contributions to the Employees' Provident Fund or in recovery of the dues on that account. The result is that the amount of Provident Fund arrears recoverable from the employers has been steadily increasing. In 1959-60, the arrears which amounted to Rs. 3.65 crores, rose to Rs. 5.96 crores as on the 31st March, 1967. The arrears stood at Rs. 14.6 crores on 31st March, 1970 and they have risen to Rs. 20.65 crores as on the 31st March, 1972.

2. The National Commission on Labour has recommended that in order to check the growth of arrears, penalties for defaults in payment of Provident Fund dues should be made more stringent and that the defaults should be made cognizable. In its 116th Report presented to Parliament in April, 1970, the Estimates Committee has endorsed the recommendations made by the National Commission on Labour and has further suggested that Government should consider the feasibility of providing compulsory imprisonment for certain offences under the Act. Accordingly, it is proposed to amend the Act so as to render the penal provisions more stringent and to make defaults cognizable offences. Provision is also being made for compulsory imprisonment in cases of non-payment of contributions and administration or inspection charges. As recommended by the Estimates Committee, a further provision is being made to enable levy of damages equal to the amount of arrears from a defaulting employer.

3. The National Commission on Labour has also recommended that arrears of Provident Fund should be made the first charge on the assets of an establishment at the time it is wound up. It is, therefore, proposed to amend section 11 of the Act to provide that any amount due from an employer in respect of the employees' contribution (deducted from the wages of an employee) for a period of more than six months shall be deemed to be the first charge on the assets of the establishment and shall be paid in priority to all other dues.

4. Further, in pursuance of the recommendations made by the National Commission on Labour and the Estimates Committee, it is proposed to empower the Employees' Provident Fund Organisation to issue recovery certificates and to sanction prosecutions under the Act.

5. Opportunity is also being taken to clarify that any contributions deducted from the employees' wages by the employer under the Act shall be deemed to be entrusted to the employer within the meaning of section 405 of the Indian Penal Code.

Hence the Bill.

NEW DELHI; K. V. RAGHUNATHA REDDY.

The 12th February, 1973.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 3(2)|67-PF-II, dated the 13th February, 1973 from Shri K. V. Raghunatha Reddy, Minister of Labour and Rehabilitation to the Secretary, Lok Sabha.]

The President of India having been informed of the subject-matter of the Employees' Provident Funds and Family Pension Fund (Amendment) Bill, 1973 has, in pursuance of clause (1) of article 117 read with clause (1) of article 274 and also clause (3) of article 117 of the Constitution, recommended the introduction and consideration of the said Bill by the Lok Sabha.

FINANCIAL MEMORANDUM

Under the existing section 14B of the Act, damages not exceeding 25 per cent. of the amount of arrears are recoverable from a defaulting employer. Clause 6 of the Bill seeks to amend the said section 14B for the purpose of levying damages upto the amount of arrears from defaulting employers. Clause 8 of the Bill further provides that where an employer transfers an establishment in whole or in part, by sale, gift, lease or licence or in any other manner, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contributions and other sums due up to the time of transfer. The Act covers some of the Government establishments also and there may be cases where damages at a higher rate may have to be paid by Central Government. There may also be cases where the Central Government, if it takes over an establishment, may have to pay the contributions and other sums due before the take-over. In such cases, some expenditure may be involved from the Consolidated Fund of India. The expenditure which will be mainly of a non-recurring nature is, however, of a contingent and remote character and therefore, it is not possible to give any estimate thereof at this stage. No recurring expenditure is expected to be involved.

S. L. SHAKDHER,
Secretary.

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1973